

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ANDRE LaSHAUN THOMPSON,
Plaintiff,
v.
WARDEN, et al.,
Defendants.

No. 2:19-CV-2565-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is plaintiff's motion for the appointment of counsel (ECF No. 8).

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. According to plaintiff, counsel should be appointed to assist him because he is
10 receiving mental health care. See ECF No. 6. Plaintiff does not, however, explain the level of his
11 mental health care, the seriousness of his mental health condition, or how his mental health
12 treatment is precluding him from proceeding on his own. Plaintiff states that he has obtained the
13 assistance of other inmates and does not state that he expects this assistance to end. Moreover, at
14 this stage of the proceedings before plaintiff has filed a first amended complaint as directed in the
15 accompanying order, and before any discovery has been conducted or any dispositive motions
16 filed, the Court cannot say that plaintiff has shown any particular likelihood of success on the
17 merits. Court also observes that – with inmate assistance – plaintiff has been able to articulate his
18 claims sufficiently. Finally, plaintiff's claims appear to be neither legally nor factually complex.

19 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the
20 appointment of counsel (ECF No. 8) is denied.

21 Dated: June 4, 2020



22 DENNIS M. COTA
23 UNITED STATES MAGISTRATE JUDGE
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